

Group V: Claim 23, drawn to a method for screening for polynucleotides which encode a protein having the activity of the RodA cell division protein by hybridization with a polynucleotide;

Group VI: Claims 24, drawn to a method for detecting a nucleic acid by contacting a sample with a probe;

Group VII: Claims 25, drawn a method for producing a nucleic acid by contacting a nucleic acid sample with a probe;

Group VIII: Claims 27 and 28, drawn to a *Coryneform bacterium* comprising an enhanced *rodA* gene;

Group IX: Claim 29, drawn to an *Escherichia coli* DSM 14312;

Group X: Claims 30-34, drawn to a process for producing L-amino acids comprising culturing a bacterial cell which comprises an enhanced *rodA* gene;

Group XI: Claims 30 and 35, drawn to a process for producing L-amino acids comprising culturing a bacterial cell which comprises an enhanced *rodA* gene and at least one gene selected from the group consisting of *dapA*, *gap*, *tpl*, *pgk*, *zwf*, *pyc*, *mqa*, *lysC*, *lysE*, *hom*, *ilvA*, *ilvBN*, *ilvD*, and *zwal* is [enhanced];

Group XII: Claims 30 and 36, drawn to a process for producing L-amino acids comprising culturing a bacterial cell which comprises an enhanced *rodA* gene and at least one gene selected from the group consisting of *pck*, *pgi*, *poxB*, and *zwa2* is attenuated; and

Group XIII: Claim 37, drawn to an isolated polypeptide comprising the amino acid sequence of SEQ ID NO: 2.

In addition, the Office is requiring an election of a single disclosed species as follows:

If Group XI (Claims 30 and 35) is elected, one of *dapA*, *gap*, *tpl*, *pgk*, *zwf*, *pyc*, *mqa*, *lysC*, *lysE*, *hom*, *ilvA*, *ilvBN*, *ilvD*, and *zwal*.

If Group XII (Claims 30 and 36) is elected, one of *pck*, *pgi*, *poxB*, and *zwa2*.

Applicants elect, with traverse, Group I, Claims 1-6, 10-22, and 26. Applicants note that an election of Species is not required with the election of Group I.

Applicants note that claims of Groups II-VII are directly dependent from the claims of Group I, as such these groups are not separable.

Applicants further note that the *Coryneform* bacteria of Group VIII is a component of the methods of Groups X-XII, and therefore Restriction between these Groups is improper.

Citing MPEP §806.04 and MPEP §808.01, the Office has characterized the inventions of Groups I, VIII, IX, and XIII as unrelated. According to MPEP 808.01, if inventions are held unrelated, it must be shown that they are not disclosed as capable of use together. However, the office has merely stated its conclusion without providing sufficient reasons or examples. Thus, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement and it should be withdrawn.

The Office has characterized, citing MPEP §806.04 and MPEP §808.01, the inventions of Groups II-VII and X-XII as unrelated. Applicants disagree. Applicants note that the methods of Groups II-VII depend from the claims of Group I, and as such are inseparable. In addition, Groups X-XII include Claim 30, and therefore, should not be separated. Furthermore, the Office has not provided sufficient reasons and/or examples to support this assertion. The Office has merely stated the conclusion. Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement and it should be withdrawn.

Citing MPEP §806.04 and MPEP §808.01, the Office has characterized the inventions of Groups VIII, IX, and XIII are unrelated to the processes of Groups II-VII, XI, and XII. Applicants note that the *Coryneform* bacterium of Group VIII is a component of the methods of Groups XI. Furthermore, the Office merely states the conclusion without indicating why the groups are unrelated. Accordingly, the Office has failed to meet the burden necessary in order to sustain the Restriction Requirement and it should be withdrawn.

In regard to Groups I and (II-VII), the Office has characterized the relationship between these two groups as product and process of use. Citing MPEP §806.05(h), the Office suggests that the claimed composition can be used in a materially different process “such as using the polynucleotide in a recombinant process for the production of a polypeptide.” However, the processes of Groups II-VII are directly dependent from Group I, and as such can not be separated.

In regard to Groups VIII and X, the Office has characterized the relationship between these two groups as product and process of use. Citing MPEP §806.05(h), the Office suggests that the claimed composition can be used in a materially different process such as “using the *Coryneform* bacterium in a recombinant process for the production of a polypeptide.” However, the *Coryneform* bacteria of Group VIII is a component of the method of Groups X, and as such can not be separated.

Applicants respectfully traverse on the additional grounds that the Office has not shown that a burden exists in searching the entire application.

Further, MPEP §803 states as follows:

If the search and examination of an entire application can be made without serious burden, the Examine must examine it on its merits, even though it includes claims to distinct or independent inventions.

Applicants submit that a search of all claims would not constitute a serious burden on the Office, particularly in view of the fact that Groups II-VII and Group X-XII are classified in the same subclasses (class 435, subclass 6 and class 435, subclass 106, respectively).

For the reasons set forth above, Applicants contend that the Restriction Requirement is improper and should be withdrawn.

Additionally, MPEP §821.04 states:

...if applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims which depend from or otherwise include all the limitations of the allowable product claim will be rejoined.

Applicants respectfully submit that should the elected group be found allowable, non-elected process claims should be rejoined.

Applicants further submit that this application is now in condition for examination on the merits and an early notification to that effect is earnestly solicited.

Respectfully submitted,
OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No. 24,618

Vincent K. Shier, Ph.D.
Registration No. P-50,552

Tel: (703) 413-3000
Fax: (703)413-2220
NFO:VKS:ksh
I:\atty\VKS\212532US-RR ER Resp.wpd



22850